HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.643 of 2007

Between:

The A.P. Power Generation Corporation Limited
and another

… Appellants

And

P. Ravichander and others

… Respondents

Counsel for the appellants: Shri G. Vidyasagar

Counsel for respondent No.1: Shri P. Sridhar Rao

::JUDGMENT::

August 23, 2007

Per G.S. Singhvi, CJ

This is an appeal by the Andhra Pradesh Power Generation Corporation Limited (for short, 'the Corporation') for setting aside order dated 19.2.2007 passed by the learned Single Judge whereby he confirmed ad-interim order dated 26.4.2006 passed in WPMP

No.11144 of 2006 subject to the condition of reinstatement of respondent No.1 herein.

For deciding the issue arising in the appeal, we may briefly notice the facts.

Respondent No.1 was engaged as Electrician (skilled contract labour) at Ramagundam Thermal Station through Sri Raja Rajeshwara Enterprises, Engineers and Contractors, and other licenced contractors to whom the erstwhile Andhra Pradesh State Electricity Board (for short, 'the Board') and the appellant awarded contracts from time to time. Respondent No.1 worked as a contract labour from 1.1.1993 to 31.5.1998. During this period, he carried out several works relating to operation of breakers, switchboard, 40 MVA transformers, HT motors, LT motors etc. He was paid monthly wages by the Board and appellant through the licenced contractors. The Government of Andhra Pradesh vide G.O.Ms.No.41, LET & F Department, dated 23.9.1996 abolished the contract labour in 33 categories of employment of the Board. As a sequel to this policy decision, the Board issued B.P.Ms.No.37, dated 18.5.1997, B.P.Ms.No.260, dated 19.12.1997 and B.P.Ms.No.272, dated 31.12.1997 for absorption of the contract labour working in 33 specified categories and absorbed large number of contract labour. However, the case of respondent No.1 was not considered. He, therefore, filed writ petition in this Court. In furtherance of the direction given by the Court, respondent No.1 was interviewed, but his candidature was rejected vide proceedings dated 15.4.1999. He then filed Writ Petition No.20463 of 2000, which was allowed by the learned Single Judge on 11.9.2002. Writ Appeal No.88 of 2003 filed by the appellants was allowed by the Division Bench vide judgment dated 5.9.2003 and the order of the learned Single Judge was set

aside. However, liberty was given to respondent No.1 to avail the alternative remedy by raising an industrial dispute. Thereafter, respondent No.1 filed an application under Section 2-A (2) of the Industrial Disputes Act, 1947 (for short, 'the Act') before the Chairman, Industrial Tribunal-cum-Labour Court, Godavarikhani (for short, 'the Industrial Tribunal') for setting aside the oral termination of his service and also to quash proceedings dated 15.4.1999. He also prayed for issue of a direction to non-applicant Nos.1 and 2 (the appellants herein) for his reinstatement and absorption with the benefit of continuity of service and back wages. The same was registered as I.D.No.150 of 2003. He pleaded that by having worked as contract labour (Electrician) under the licenced contractors from 1.1.1993 to 31.5.1998, he had become entitled to be absorbed in the services of the Andhra Pradesh Power Generation Corporation and that the rejection of his claim for absorption is liable to be set aside.

In the counter filed on behalf of the appellants, it was pleaded that the applicant (respondent No.1 herein) is not their workman; that there does not exist relationship of employer and employee between the parties; that the contractors carried out certain works awarded to them and they might have engaged the applicant; that the State Government abolished contract labour in 33 categories of employment, but the case of respondent No.1 is not covered by the policy contained in G.O.Ms.No.41, dated 23.9.1996 read with B.P.Ms.No.37, dated 18.5.1997 and that he is not entitled to reinstatement with consequential benefits.

In a separate reply filed by it, respondent No.3 indirectly supported the cause of respondent No.1.

After considering the pleadings and evidence produced by the parties, the Industrial Tribunal passed award dated 11.8.2005 for

absorption of respondent No.1 as electrician or on any other suitable post. However, his claim for grant of the benefit of continuity of service and back wages was rejected. The operative part of the award reads as under:

> "In the result, the petition is allowed. The rejection order dated 15.4.1999 is set aside and the respondents 1 & 2 are directed to absorb and appoint the petitioner as Electrician or any other suitable post. This order shall have prospective effect only. The petitioner is not entitled to any back wages. There shall be no order as to costs."

The appellants challenged the award in Writ Petition No.8573 of 2006. They also filed WPMP No.11144 of 2006 for suspending the operation of the award. By an ad-interim order dated 26.4.2006, the learned Single Judge suspended the award.

On notice, respondent No.1 filed WVMP No.1479 of 2006 for vacating the ad-interim order by asserting that after illegal denial of absorption, he had remained unemployed.

After hearing the parties, the learned Single Judge passed the order, which is subject matter of challenge in this appeal.

Shri G. Vidyasagar, learned counsel for the appellants argued that the award passed by the Tribunal is liable to be treated as nullity because the application filed by respondent No.1 under Section 2-A (2) of the Act was not maintainable. Learned counsel submitted that the provisions of Section 2-A can be invoked by the workman only in the matters relating to dismissal, discharge, retrenchment or termination of service and not for claiming absorption and as there was no termination of the service of respondent No.1, the application filed by him ought to have been dismissed at the threshold. He further argued that the direction given by the learned Single Judge for reinstatement of respondent No.1 is legally unsustainable and is

liable to be set aside because the said respondent was never absorbed in the services of the appellants.

Shri P.Sridhar Rao, learned counsel for respondent No.1 supported the order of the learned Single Judge and argued that the writ appeal should be dismissed because the elements of balance of convenience, irreparable injury and public interest are clearly against the grant of absolute stay in terms of the prayer made in WPMP No.11144 of 2006.

We have considered the respective submissions and critically examined the entire record.

Since the writ petition filed by the appellants against the award of the Tribunal is pending adjudication before the learned Single Judge, we do not consider it proper to express opinion on the merits and demerits of the appellant's challenge to the award of the Industrial Tribunal, but at the same time, we do not find any valid ground or justification to entertain its challenge to the interlocutory order passed by the learned Single Judge. The admission of the writ petition filed against the award of the Tribunal indicates that the appellants have been able to make out an arguable case. However, that, by itself, does not justify grant of an absolute stay in terms of the prayer made by them because the elements of irreparable injury and balance of convenience are clearly against the stay of the direction given by the Industrial Tribunal for reinstatement of respondent No.1. It is neither the pleaded case of the appellants nor their counsel Shri G. Vidyasagar argued that respondent No.1 had, during the course of his employment as an Electrician for a period of more than five years, committed any serious misconduct and punished for the same. Learned counsel also failed to show that the objection regarding maintainability of the application filed by respondent No.1 under

Section 2-A (2) of the Act was raised before the Industrial Tribunal. Therefore, we do not see any valid ground or justification to stall his reinstatement, which is the only source of sustenance for himself and his family. The reinstatement of respondent No.1 can certainly be placed at a pedestal higher than a money decree passed in a civil suit. The reinstatement provides the source of sustenance to respondent No.1 and his family. Therefore, stay of the award in absolute terms would tantamount to depriving respondent No.1 and his family of their livelihood. In other words, respondent No.1 will suffer irreparable injury if the award of the Industrial Tribunal is stayed in its entirety.

The element of balance of convenience is also not in favour of the appellants. They are a big industrial-cum-commercial organization and employment of one person like respondent No.1 is not going to affect their financial health or administrative structure. As against this, if the order of reinstatement is stayed, respondent No.1 and his family will be thrown on the roads and may die of starvation.

No other point has been argued.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP No.1292 of 2007 filed by the appellants for interim relief is also dismissed.

G.S. SINGHVI, CJ

August 23, 2007

C.V. NAGARJUNA REDDY, J

svs